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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 556

UNITED MINE WORKERS OF AMERICA, *Petitioner*

v.

WHITE OAK COAL COMPANY, INC.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Petitioner, United Mine Workers of America, prays that this Court grant rehearing of its order of January 6, 1964, denying the petition for writ of certiorari, — U. S. —, 32 LW 3239, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Sixth Circuit in the above-entitled case as prayed in its petition filed October 15, 1963, herein.

Reasons for Granting Rehearing and Issuing the Writ

This Court granted certiorari on December 9, 1963, to review Sixth Circuit rulings adverse to the petitioning union in *Morton* v. *Local 20, Teamsters, etc.*, 6 Cir., 320 F. 2d 505, wherein the Questions Presented by Teamsters are:

"(1) Does federal preemption doctrine bar federal district court from exercising pendent jurisdiction to award actual and punitive damages based upon alleged violations of state common law, where such violations do not arise under Section 303 of Taft Act, and where preemption doctrine bars state courts from awarding either actual or punitive damages;"

"(2) Does Section 303 of Taft Act authorize award of total actual damages for injury resulting directly from lawful primary strike merely because union also engaged in other conduct that was found to violate Section 303."

The Sixth Circuit (320 F. 2d 506-7) relied in part upon UMW's instant *White Oak* case to support its rejection of Teamsters' contentions in the issues covered in the above-quoted Questions Presented. Similar questions,[1] involving identical issues presented by

[1] In UMW's Petition for Certiorari in the instant case, Questions 3 and 4 read thus:

"3. In a suit for damages under state law by an employer against a labor union, is a court empowered, notwithstanding the principles of federal preemption, to render judgment against the union for compensatory damages based upon the total loss sustained by the employer by reason of an economic strike of his employees, and for punitive damages, merely because violence and disorder for which the union is held responsible occurs during its course, where it affirmatively appears that the union is bargaining agent of the employees involved and that the employer's inability to operate and consequent losses were the result of primary union activity to obtain a union contract?"

"4. In an action for damages against a labor union in which plaintiff contends certain acts which occurred during a labor dispute constituted a violation of Section 303 of the Act and that the union's entire course of conduct during the dispute constituted a violation of state common and statute law, was the District Court empowered under the theory of ancillary or pendant jurisdiction, to determine the non-federal claim?"

UMW in the instant *White Oak* case were rejected for review by this Court on January 6, 1964.

Two days later (January 8, 1964), in an action involving, among others, issues identical to those to be answered in *Morton*, and styled *R. P. Price, et al.* v. *United Mine Workers of America*, No. 15,046,[2] the Sixth Circuit obviously concerned as to the correctness of its *Morton* rulings, based in part upon *White Oak*, deferred further consideration "to await the decision of the Supreme Court in the *Morton* case".[3]

Thus, *White Oak*, *Morton* and *Price* are legal equivalents, at least so far as the issues within the scope of the Questions Presented in *Morton* are concerned. The concern of whether *Morton* was correctly decided, which prompted the Sixth Circuit to defer consideration in *Price*, should attend this Court's reconsideration of UMW's petition for certiorari in *White Oak* and prompt its vacation of the order denying certiorari therein.

The Court's acceptance of the Questions Presented in *Morton* bespeaks its belief in the importance of the issues to be reviewed. In the absence of this Court's vacating the denial order in *White Oak*, UMW is confronted with satisfying an enormous money judgment ($310,000.00). It has no alternative. If, thereafter, this Court's answers in *Morton* show the Sixth Circuit erred in *White Oak*, procedural remedies would then have been foreclosed and UMW could find no consola-

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[2] In the Sixth Circuit's *Price* case, Questions Eight, Nine and Twelve concern the issues to be answered in *Morton*. These questions appear in Appendix B herein.

[3] The Sixth Circuit's deferral order appears herein as Appendix A.

tion in the knowledge that it had been correct in the principles urged by it. Clearly, in the light of review granted in *Morton*, manifest justice calls for vacating the order denying certiorari and entry of an order awarding the writ prayed for or, in the alternative, postponement of final action on the petition pending *Morton's* disposition.

Respectfully submitted,

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Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

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